

## UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America  
v.Mark Mercurio  
DOB: 9/4/1968

Defendant(s)

) Case: 1:24-mj-00363  
 ) Assigned To : Judge G. Michael Harvey  
 ) Assign. Date : 11/20/2024  
 ) Description: COMPLAINT W/ARREST WARRANT  
 )  
 )

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of \_\_\_\_\_ in the  
 \_\_\_\_\_ in the District of Columbia, the defendant(s) violated:

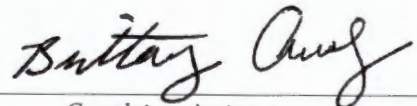
## Code Section

## Offense Description

18 U.S.C. § 111(a)(1)- Assaulting, Resisting, or Impeding Certain Officers  
 18 U.S.C. § 231(a)(3)- Civil Disorder  
 18 U.S.C. § 1752(a)(1)- Entering and Remaining in a Restricted Building or Grounds  
 18 U.S.C. § 1752(a)(2)- Disorderly and Disruptive Conduct in a Restricted Building or Grounds  
 18 U.S.C. § 1752(a)(4)- Engaging in Physical Violence in a Restricted Building or Grounds  
 40 U.S.C. § 5104(e)(2)(D)- Disorderly Conduct in a Capitol Building  
 40 U.S.C. § 5104(e)(2)(F)- Act of Physical Violence in the Capitol Grounds or Buildings  
 40 U.S.C. § 5104(e)(2)(G)- Parading, Demonstrating, or Picketing in a Capitol Building

This criminal complaint is based on these facts:

See attached statement of facts.

☒ Continued on the attached sheet.


Complainant's signature

Brittany Ausley, Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1  
 by telephone.

Date: 11/20/2024


Judge's signature

City and state: Washington, D.C.

G. Michael Harvey, U.S. Magistrate Judge

Printed name and title

### STATEMENT OF FACTS

Your affiant, Brittany Ausley, is a Special Agent with the Federal Bureau of Investigation ("FBI"). I am currently assigned to the Joint Terrorism Task Force in the FBI's Charlotte Field Office. In my duties as a special agent, I am empowered by law to conduct investigations of and to make arrests for offenses enumerated in Title 18 of the United States Code. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of a violation of Federal criminal laws, including those pertaining to criminal activities at the U.S. Capitol building and grounds on January 6, 2021.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

### ***Facts Specific to Mark Mercurio***

As set out in more detail below, based on my review of publicly available video footage, United States Capitol Police (“USCP”) surveillance footage, and body worn camera (“BWC”) footage of police officers who responded to the United States Capitol on January 6, 2021, I have observed an individual later identified as Mark Mercurio among a large group of rioters who committed illegal acts there that day. Specifically, Mercurio illegally entered the U.S. Capitol grounds and building despite signage and other indicators that the area was closed to the public, and physically interfered with and pushed two police officers who were responding to the riot at the U.S. Capitol.

#### **A. Identification of Mark Mercurio**

Mark Mercurio initially came to the FBI’s attention on or about January 14, 2021 when someone who had met Mercurio on multiple occasions (“Witness 1”) contacted the FBI about Mercurio’s involvement in the January 6, 2021 riots at the U.S. Capitol building. Specifically, Witness 1 reported that Mercurio’s spouse had told their mutual friend that Mercurio had entered the U.S. Capitol building on January 6, 2021.

On January 21, 2021, an FBI Agent and a Task Force Officer conducted an interview of Mercurio at his then residence in Wake Forest, North Carolina in which Mercurio admitted to being inside the U.S. Capitol building on January 6, 2021. Mercurio admitted that at one point before entering the U.S. Capitol building, he observed part of the crowd pushing against a police line. Mercurio admitted entering the Rotunda, and heading down a hallway off of the Rotunda where he observed another police line. Mercurio denied forcing his way into the building or participating in any violence himself, though he did mention being hit with chemical spray as he left the building. Mercurio provided the name of a friend (“Associate 1”) who accompanied Mercurio to Washington D.C. and into the Capitol.

According to records obtained from Verizon, on January 6, 2021, a phone number beginning with the area code (919) ending in 2234 (“the 2234 number”) was the phone number for the business “Stonehenge Masonry” and the contact name was “Mark Mercurio.” During his January 21, 2021 FBI interview, Mercurio stated that he was the owner of Stonehenge Masonry, Inc., a stone masonry business. North Carolina employment records confirm that Mercurio was employed by Stonehenge Masonry on January 6, 2021. According to records obtained from Apple Inc., the 2234 number is associated with two Apple accounts; the name listed for both accounts is “Mark Mercurio” and the phone number listed for both accounts is the 2234 number. The customer name for several devices associated with one of the accounts – two of which also correspond to the 2234 number – is “Mark Mercurio.” According to records obtained through a search warrant served on Verizon, on January 6, 2021, in and around the time of the incident, the cellphone associated with the 2234 number was identified as having utilized a cell site consistent with



providing service to a geographic area that included the interior of the United States Capitol Building.

The FBI Agent who interviewed Mercurio confirmed that Mercurio's appearance matched the appearance of an individual in the Capitol footage. Additionally, the Agent reviewed Mercurio's North Carolina driver's license photo and confirmed that the individual he interviewed was, in fact, Mark Mercurio.

In March of 2021, an FBI agent interviewed Associate 1, who confirmed travelling to Washington D.C. and entering the U.S. Capitol building with Mercurio on January 6, 2021. He verified that they went into the Rotunda, and down a wing off of the Rotunda where there were police in riot gear.

Based on my review of publicly available video footage, USCP surveillance footage, and body worn camera (BWC) footage from January 6, 2021, I have learned that, on that day, Mercurio was wearing a grey long-sleeved fleece jacket over a dark colored button up shirt over a dark grey t-shirt, dark grey or black jeans, tan boots, a dark grey or black beanie, a dark grey or black bandana with a light pattern (often used as a facemask), and dark colored sunglasses with a strap around his neck, as depicted below:



*Images 1, 2, & 3 – Mercurio at the U.S. Capitol on January 6, 2021*

This is the same individual identified by the interviewing agent as Mercurio.

#### **B. Mercurio's Conduct on January 6, 2021**

I have reviewed CCV and open source footage and traced Mercurio's path through the U.S. Capitol Building on January 6, 2021. CCV footage shows Mercurio entered the U.S. Capitol Building through the Upper West Terrace Door at approximately 2:40 p.m. Video legally obtained by the FBI from third parties shows that the Upper West Terrace door through which Mercurio entered was posted "Emergency Exit Only" and that a high-pitched alarm was going off at the time Mercurio entered. Mercurio made his way to the front of a large group of rioters at that location

and confronted a handful of USCP officers inside the Upper West Terrace Door. Mercurio can be seen speaking and gesturing to the officers. *See Image 1, above.*

After several minutes, the officers began walking backwards, followed by Mercurio and other rioters, who ultimately walked past the officers and further into the Capitol building. There Mercurio held the interior door to the stairs up to the Rotunda open for Associate 1 and other rioters. Mercurio, Associate 1, and the other rioters then headed up the stairs toward the Rotunda.

CCV cameras show Mercurio and Associate 1 entered the Rotunda at 2:45 p.m. Mercurio held up his cell phone with his right hand; he appears to have been filming his surroundings. This happened at various points during his time in the Rotunda that day.



*Images 5 & 6 – Mercurio Filming on His Cell Phone Inside the Rotunda on January 6, 2021*

At approximately 2:46:29 p.m., Mercurio and Associate 1 disappeared from Rotunda CCV. They reappeared on it again at approximately 3:01 p.m., walked directly past a USCP officer, and headed toward a man along the Rotunda wall who was using a bullhorn to address the gathering crowd. Mercurio again appeared to use his cell phone to take footage of this man.

After that, Mercurio was part of a mob of rioters who physically pushed back against the police line as USCP and Metropolitan Police Department (MPD) officers attempted to clear the rioters from the Rotunda. At approximately 3:08 p.m., Mercurio is positioned at the front of a line of rioters that is confronting a line of police on MPD Officer D.N.'s BWC video. Then at approximately 3:09 p.m., Officer D.N. used his baton to push Mercurio and another rioter back.





*Images 7 & 8 – Mercurio Confronting Police Line in the Capitol on January 6, 2021*

At approximately 3.10 p.m., MPD Officer S.H. was attempting to clear Mercurio and others from the Rotunda using his baton held out in front of him with two hands. Officer S.H.'s BWC video shows that Mercurio visibly shoved Officer S.H.'s baton into Officer S.H.'s chest with both hands while yelling expletives at him, specifically, "I'm fucking tired of you fucking... [unintelligible]..." An officer next to Officer S.H. can then be heard off-camera saying to Mercurio, "You don't want to assault a police officer... Just go outside."



*Image 9 – Mercurio Shoving Officer S.H. Inside the Rotunda on January 6, 2021*

Seconds later, Mercurio physically interfered with another officer who was trying to clear rioters from the Rotunda. Specifically, Mercurio used his right hand to push the officer's left arm downward at approximately 3:10:27 p.m. while yelling "What are you fucking [unintelligible]?" A nearby officer then admonished, "Don't push!" This assault was captured on multiple officers' BWC video.



*Images 10 & 11 – Mercurio Shoving Second Officer Inside the Rotunda on January 6, 2021*

Immediately after these events, at approximately 3:10:30 p.m., BWC shows Mercurio covered his eyes with his hands and ducked down and fled from the area toward the door out to the Rotunda Lobby. CCV footage shows that at approximately 3:11 p.m., Mercurio exited the Rotunda into the Rotunda Lobby. He was rubbing his eyes and crying in what appeared to be a reaction to having been sprayed with chemical irritants. Another rioter helped flush out Mercurio's eyes, assisted Mercurio to his feet, told others to make way, and escorted Mercurio out of the Rotunda Lobby door – with Associate 1's help – at approximately 3:12 p.m.

Open source footage and images show other rioters escorted the injured Mercurio down the steps leading away from the Rotunda Lobby door with Associate 1 following shortly behind.



*Image 12 – Rioters Helping an Injured Mercurio Down Capitol Steps on January 6, 2021*



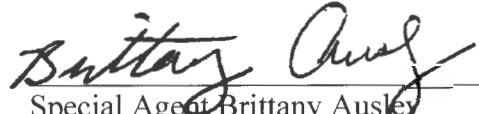
Based on the foregoing, your affiant submits that there is probable cause to believe that Mark Mercurio violated 18 U.S.C. § 1752(a)(1), (2) and (4), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do so; (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; and (4) knowingly engages in any act of physical violence against any person or property in any restricted building or grounds; or attempts or conspires to do so. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that Mark Mercurio violated 40 U.S.C. § 5104(e)(2)(D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.


Your affiant submits there is also probable cause to believe that Mark Mercurio violated 18 U.S.C. 231(a)(3), which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. For purposes of Section 231 of Title 18, a federally protected function means any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof. This includes the Secret Service’s protection of the Vice President and his family and the Capitol Police’s protection of the U.S. Capitol.



Your affiant submits that there is also probable cause to believe that Mark Mercurio violated 18 U.S.C. § 111(a)(1), which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in section 1114 of Title 18 while engaged in or on account of the performance of official duties, where such acts involve physical contact with the victim or the intent to commit another felony. Persons designated within section 1114 of Title 18 include federal officers such as USCP officers, and include any person assisting an officer or employee of the United States in the performance of their official duties.

  
Special Agent Brittany Ausley  
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 20th day of November 2024.

  
HONORABLE G. MICHAEL HARVEY  
U.S. MAGISTRATE JUDGE